

**State Water Resources Control Board**

Division of Drinking Water

February 10, 2015  
System No.: 2400165

Mr. James Marnatti  
Foster Farms  
Director of Environmental Affairs  
1333 Swan Street  
Livingston, CA 95334

RE: **Compliance Order No. 03-11-15R-001 Violation of Title 22, California Code of Regulations, Section 64431, Arsenic MCL**

Dear Mr. Marnatti:

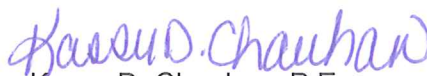
The State Water Resources Control Board – Division of Drinking Water (Division) has issued Compliance Order No. 03-11-15R-001 to the Foster Farms Feed Mill (Feed Mill) Water System, for violation of the Arsenic Maximum Contaminant Level (MCL). The compliance order is enclosed.

As required in the Compliance Order, the Feed Mill is expected to propose a solution and implement a project to ensure that water delivered to customers meets the arsenic MCL. It is noted that Feed Mill is providing bottled water and collecting samples on a quarterly basis. The Feed Mill is required to provide quarterly public notification for the arsenic MCL violation and to continue quarterly arsenic monitoring.

The Feed Mill will be billed at the Division's hourly rate (currently estimated at \$128.00) for the time spent on issuing this Compliance Order. The California Health and Safety Code Section 116577 provides that a public water system must reimburse the Division for actual costs incurred by the Division for specified enforcement actions, including but not limited to, preparing, issuing and monitoring compliance with an order. At this time, the Division has spent approximately two hours on enforcement activities associated with this violation.

The Feed Mill will receive a bill sent from the Division of Drinking Water Fee Billing Unit in August of the next fiscal year. This bill will contain fees for any enforcement time spent on Feed Mill for the current fiscal year. If you have any questions regarding this matter, please contact me at (559) 447-3316.

Sincerely,



Kassy D. Chauhan, P.E.  
Senior Sanitary Engineer,  
Merced District  
Division of Drinking Water

CLCKDC/mlm  
Enclosures

cc: Merced County Environmental Health Department  
Denise Holmes, Environmental Affairs Assistant Manager (same address)  
Joe Mcquire Westside Water Conditioning 45 West G Street Los Banos, CA 93635

STATE OF CALIFORNIA  
WATER RESOURCES CONTROL BOARD  
DIVISION OF DRINKING WATER

IN RE: **FOSTER FARMS DELHI FEED MILL COLLIER ROAD**  
Water System No. 2400165

TO: Mr. James Marnatti  
Director of Environmental Affairs  
1333 Swan Street  
Livingston, CA 95334

CC: Merced County Environmental Health Department  
Denise Holmes, Environmental Affairs Assistant Manager (same address)

**COMPLIANCE ORDER FOR VIOLATION  
OF CALIFORNIA CODE OF REGULATIONS, TITLE 22, SECTION 64431  
ARSENIC MCL VIOLATION**

Issued on February 9, 2015

Section 116655, Chapter 4 of the California Health and Safety Code authorizes the issuance of an Order for failure to comply with a requirement of the California Safe Drinking Water Act, or any regulation, standard, permit, or order issued thereunder.

The State Water Resources Control Board (hereinafter "Board"), acting by and through its Division of Drinking Water (hereinafter "Division") and the Deputy Director for the Division (hereinafter "Deputy Director"), hereby issues a compliance order to the Foster Farms Delhi Feed Mill (hereinafter "Water System") (14519 West Collier Road Delhi, CA 95315) for violation of California Code of Regulations (CCR), Title 22, Section 64431.

1                   **APPLICABLE AUTHORITIES**

2  
3       The applicable statutes and regulations are provided in Attachment A, attached hereto and  
4       incorporated by reference.

5  
6                   **FINDINGS**

7       The Foster Farms Delhi Feed Mill is a nontransient-noncommunity water system located in  
8       Merced County. The Water System serves water to the feed mill processing operations through  
9       one (1) service connection. The Feed Mill has a population of at least 200 employees for more  
10      than six months of the year. The Water System uses groundwater obtained from the onsite well  
11      (Well No. 1).

12  
13      Prior to April 1, 2014, jurisdiction for regulatory oversight of the Feed Mill's Water System was  
14      maintained by the Merced County Environmental Health Department (County). Effective April 1,  
15      2014, jurisdiction oversight of the Water System was transferred of the Division.

16  
17      Beginning on January 23, 2006, the U.S. Environmental Protection Agency (USEPA) adopted a  
18      revised maximum contaminant level (MCL) for arsenic of 0.010 mg/L (milligrams per liter). The  
19      arsenic MCL of 0.010 mg/L was adopted for California and became effective on November 28,  
20      2008. Prior to this date, any non-compliance issues were referred to U.S. EPA for enforcement  
21      action.

22  
23  
24      In January 2015, the Water System failed to meet the arsenic MCL of 0.010 mg/l in water  
25      produced by Well No. 1. The Water System has been monitoring Well No. 1 for arsenic on a  
26      quarterly basis. Based on the most recent quarterly arsenic results, Well No. 1 was showing a  
27      running annual average (RAA) that exceeds the arsenic MCL. The Water System currently

provides bottled water to its employees. The quarterly arsenic analysis results and the calculated running annual average are shown in the table below:

Table 1: Well 1 - Arsenic Analysis Results and RAA

Sample Date	Sample Result (mg/l)
03/06/2014	0.015
10/08/2014	0.015
01/18/2015	0.014
RAA	0.011

#### **DETERMINATIONS**

Based on the above Findings, the Division has determined that the Water System has violated provisions contained in Title 22, California Code of Regulations (CCR) Section 64431 (a). Specifically, the water produced by the Water System exceeds the maximum contaminant level of 0.010 mg/L for arsenic, and therefore, does not comply with a primary drinking water standard.

#### **DIRECTIVES**

To ensure that the water supplied by the Foster Farms Feed Mill's water system is at all times safe, wholesome, healthful, and potable, and pursuant to the California SDWA H&S Code, the Foster Farms Feed Mill is hereby directed to take the following actions:

1. Comply with CCR, Title 22, Section 64431 (a) in future monitoring periods after conducting upgrades of the treatment facility and treatment operations.



2. The Foster Farms Feed Mill shall prepare a Corrective Action Plan for improvements to the water system to correct the water quality problem (violation of the Arsenic MCL) and eliminate the need to deliver water to consumers that does not meet primary drinking water standards. The plan shall include a time schedule for completion of various phases of the project such as evaluation of alternatives, design, construction and startup.
3. The Correction Action Plan required under Order No. 2 above shall be submitted to the Division no later than May 31, 2015.
4. The Water System shall submit quarterly progress reports using the form provided as Attachment D to the Division, beginning the first quarter of 2015. The report will be due by the 10th day of the month following the calendar quarter. The progress reports must include status updates on the blending project that has been proposed for complying with the arsenic standards.
5. Since the Water System must use the affected well to meet system demand, public notification shall be provided in accordance with CCR Section 64463.4 of its inability to meet the arsenic MCL until a project is completed to provide water meeting the drinking water standards. The Water System shall distribute the Division-approved notice (Attachment B) to all consumers. Notification to the public shall be repeated every three months as long as the violation exists. Proof of public notification (Attachment C) to all water system users shall continue to be provided to the Division following each quarterly notification by the 10th day of the month following notification.

1 6. Quarterly arsenic monitoring must be continued for Well No. 1.

2  
3 7. The Division reserves the right to make such modifications to this Order as it may deem  
4 necessary to protect public health and safety. Such modifications may be issued as  
5 amendments to this Order and shall be effective upon issuance.

6  
7 8. All submittals required by this Order shall be addressed to:

8 Kassy D. Chauhan, P.E.

9 Senior Sanitary Engineer, Merced District

10 State Water Resources Control Board

11 Division of Drinking Water

12 265 W. Bullard Avenue, Suite 101

13 Fresno, CA 93704  
14

15 9. The Water System shall complete a project to resolve the arsenic MCL violation no later  
16 than February 28, 2018.  
17

18 10. If Water System is unable to perform the tasks specified in this Order for any reason,  
19 whether within or beyond its control, and if the Water System notifies the Division in writing  
20 no less than five days in advance of the due date, the Division may extend the time for  
21 performance if the Water System demonstrates that it has used its best efforts to comply  
22 with the schedule and other requirements of this Order.  
23

24  
25 11. If the Water System fails to perform any of the tasks specified in this Order by the time  
26 described herein or by the time subsequently extended pursuant to Item 10 above, Water  
27 System shall be deemed to have not complied with the obligations of this Order and may be

1 subject to additional judicial action, including civil penalties specified in H&S Code, Section  
2 116725 and 116730.

3  
4 12. The State of California shall not be liable for any injuries or damages to persons or property  
5 resulting from acts or omissions by the Water System, its employees, agents, or contractors  
6 in carrying out activities pursuant to this Order, nor shall the State of California be held as a  
7 party to any contract entered into by the Water System or its agents in carrying out activities  
8 pursuant to this Order.

9  
10 **PARTIES BOUND**

11 This Order shall apply to and be binding upon the Foster Farms Feed Mill, its officers, directors,  
12 agents, employees, contractors, successors, and assignees.

13  
14 **SEVERABILITY**

15 The requirements of this Order are severable, and the Foster Farms Feed Mill shall comply with  
16 each and every provision thereof notwithstanding the effectiveness of any provisions.

17  
18 **FURTHER ENFORCEMENT ACTION**

19 The California SDWA authorizes the Division to issue citations and compliance orders with  
20 assessment of administrative penalties to a public water system for violation or continued  
21 violation of the requirements of the California SDWA or any permit, regulation, permit or order  
22 issued or adopted thereunder including, but not limited to, failure to correct a violation identified  
23 in a citation or compliance order. The California SDWA also authorizes the Division to take  
24 action to suspend or revoke a permit that has been issued to a public water system if the  
25 system has violated applicable law or regulations or has failed to comply with an order of the  
26 Division; and to petition the superior court to take various enforcement measures against a  
27

1 public water system that has failed to comply with an order of the Division. The Division does  
2 not waive any further enforcement action by issuance of this compliance order.

3  
4  
5  
6 2-9-2015  
Date

Carl L. Carlucci  
Carl L. Carlucci, P.E.  
Supervising Sanitary Engineer  
State Water Resources Control Board  
Southern California Branch  
Drinking Water Field Operations

10  
11  
12 CLC/KDC/mlm

13 Attachments:

14 Attachment A: Applicable Authorities

15 Attachment B: Public Notification Notice

16 Attachment C: Proof of Notification Form

17 Attachment D: Quarterly Progress Report Form  
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### Applicable Statutes and Regulations for Citation No. 03-11-15R-001

#### Section 116655 of the CHSC states in relevant part:

(a) Whenever the department determines that any person has violated or is violating this chapter, or any permit, regulation, or standard issued or adopted pursuant to this chapter, the director may issue an order doing any of the following:

- (1) Directing compliance forthwith.
- (2) Directing compliance in accordance with a time schedule set by the department.
- (3) Directing that appropriate preventive action be taken in the case of a threatened violation.

(b) An order issued pursuant to this section may include, but shall not be limited to, any or all of the following requirements:

- (1) That the existing plant, works, or system be repaired, altered, or added to.
- (2) That purification or treatment works be installed.
- (3) That the source of the water supply be changed.
- (4) That no additional service connection be made to the system.
- (5) That the water supply, the plant, or the system be monitored.
- (6) That a report on the condition and operation of the plant, works, system, or water supply be submitted to the department.

#### Section 64431 of Title 22, California Code of Regulations (CCR) states in relevant part:

§64431. Maximum Contaminant Levels-Inorganic Chemicals.

Public water systems shall comply with the primary MCLs in table 64431-A as specified in this article.

**Table 64431-A**  
**Maximum Contaminant Levels**  
**Inorganic Chemicals**

<i>Chemical</i>	<i>Maximum Contaminant Level, mg/L</i>
Aluminum	1.
Antimony	0.006
Arsenic	0.010
Asbestos	7 MFL*
Barium	1.
Beryllium	0.004
Cadmium	0.005
Chromium	0.05
Cyanide	0.15
Fluoride	2.0
Hexavalent chromium	0.010
Mercury	0.002
Nickel	0.1
Nitrate (as NO <sub>3</sub> )	45.
Nitrate+Nitrite (sum as nitrogen)	10.
Nitrite (as nitrogen)	1.
Perchlorate	0.006
Selenium	0.05
Thallium	0.002

\* MFL=million fibers per liter; MCL for fibers exceeding 10 um in length.

**Section 64463.4 of Title 22, California Code of Regulations (CCR) states in relevant part:**  
§64463.4. Tier 2 Public Notice.

- (a) A water system shall give public notice pursuant to this section if any of the following occurs:
- (1) Any violation of the MCL, MRDL, and treatment technique requirements, except:
    - (A) Where a Tier 1 public notice is required under section 64463.1; or
    - (B) Where the Department determines that a Tier 1 public notice is required, based on potential health impacts and persistence of the violations;
  - ....
  - (3) Other violations of the monitoring and testing procedure requirements in this chapter, and chapters 15.5, 17 and 17.5, for which the Department determines that a Tier 2 rather than a Tier 3 public notice is required, based on potential health impacts and persistence of the violations; or
  - (4) Failure to comply with the terms and conditions of any variance or exemption in place.
- (b) A water system shall give the notice as soon as possible within 30 days after it learns of a violation or occurrence specified in subsection (a), except that the water system may request an extension of up to 60 days for providing the notice. This extension would be subject to the Department's written approval based on the violation or occurrence having been resolved and the Department's determination that public health and welfare would in no way be adversely affected. In addition, the water system shall:
- (1) Maintain posted notices in place for as long as the violation or occurrence continues, but in no case less than seven days;
  - (2) Repeat the notice every three months as long as the violation or occurrence continues. Subject to the Department's written approval based on its determination that public health would in no way be adversely affected, the water system may be allowed to notice less frequently but in no case less than once per year. No allowance for reduced frequency of notice shall be given in the case of a total coliform MCL violation or violation of a Chapter 17 treatment technique requirement; and
  - .....
- (c) A water system shall deliver the notice, in a manner designed to reach persons served, within the required time period as follows:
- (1) Unless otherwise directed by the Department in writing based on its assessment of the violation or occurrence and the potential for adverse effects on public health and welfare, community water systems shall give public notice by;
    - (A) Mail or direct delivery to each customer receiving a bill including those that provide their drinking water to others (e.g., schools or school systems, apartment building owners, or large private employers), and other service connections to which water is delivered by the water system; and
    - (B) Use of one or more of the following methods to reach persons not likely to be reached by a mailing or direct delivery (renters, university students, nursing home patients, prison inmates, etc.):
      - 1. Publication in a local newspaper;

2. Posting in conspicuous public places served by the water system, or on the Internet; or
  3. Delivery to community organizations.
- (2) Unless otherwise directed by the Department in writing based on its assessment of the violation or occurrence and the potential for adverse effects on public health and welfare, noncommunity water systems shall give the public notice by:
- (A) Posting in conspicuous locations throughout the area served by the water system; and
  - (B) Using one or more of the following methods to reach persons not likely to be reached by a public posting:
    1. Publication in a local newspaper or newsletter distributed to customers;
    2. E-mail message to employees or students;
    3. Posting on the Internet or intranet; or
    4. Direct delivery to each customer.

**Section 64465. of Title 22, California Code of Regulations (CCR) states in relevant part:**  
 §64465. Public Notice Content and Format.

- (a) Each public notice given pursuant to this article, except Tier 3 public notices for variances and exemptions pursuant to subsection (b), shall contain the following:
- (1) A description of the violation or occurrence, including the contaminant(s) of concern, and (as applicable) the contaminant level(s);
  - (2) The date(s) of the violation or occurrence;
  - (3) Any potential adverse health effects from the violation or occurrence, including the appropriate standard health effects language from appendices 64465-A through G;
  - (4) The population at risk, including subpopulations particularly vulnerable if exposed to the contaminant in drinking water;
  - (5) Whether alternative water supplies should be used;
  - (6) What actions consumers should take, including when they should seek medical help, if known;
  - (7) What the water system is doing to correct the violation or occurrence;
  - (8) When the water system expects to return to compliance or resolve the occurrence;
  - (9) The name, business address, and phone number of the water system owner, operator, or designee of the water system as a source of additional information concerning the public notice;
  - (10) A statement to encourage the public notice recipient to distribute the public notice to other persons served, using the following standard language: "Please share this information with all the other people who drink this water, especially those who may not have received this public notice directly (for example, people in apartments, nursing homes, schools, and businesses). You can do this by posting this public notice in a public place or distributing copies by hand or mail"; and
  - (11) For a water system with a monitoring and testing procedure violation, this language shall be included: "We are required to monitor your drinking water for specific contaminants on a regular basis. Results of regular monitoring are an indicator of whether or not your drinking water meets health standards. During [compliance period dates], we [did not monitor or test] or [did not complete all monitoring or testing] for [contaminant(s)], and therefore, cannot be sure of the quality of your drinking water during that time."

.....

- (c) Each public notice given pursuant to this article shall contain information in Spanish regarding the importance of the notice, or contain a telephone number or address where Spanish-speaking residents may contact the water system to obtain a translated copy of the public notice or assistance in Spanish. For each non-English speaking group other than Spanish-speaking that exceeds 1,000 residents or 10% of the residents in the community served, whichever is less, the public notice shall:
  - (1) Contain information in the appropriate language(s) regarding the importance of the notice, or
  - (2) Contain a telephone number or address where such residents may contact the water system to obtain a translated copy of the notice or assistance in the appropriate language.
- (d) Each public notice given pursuant to this article shall:
  - (1) Be displayed such that it catches people's attention when printed or posted and be formatted in such a way that the message in the public notice can be understood at the eighth-grade level;
  - (2) Not contain technical language beyond an eighth-grade level or print smaller than 12 point; and
  - (3) Not contain language that minimizes or contradicts the information being given in the public notice.



## Instructions for Tier 2 Arsenic MCL Notice Template

### Template Attached

Since exceeding the arsenic maximum contaminant level (MCL) is a Tier 2 violation, you must provide public notice to persons served as soon as practical but within 30 days after you learn of the violation [California Code of Regulations Title 22, Chapter 15, Section 64463.4(b)]. **Each water system required to give public notice must submit the notice to the Department for approval prior to distribution or posting, unless otherwise directed by the Department [64463(b)].**

### Notification Methods

You must use the methods summarized in the table below to deliver the notice to consumers. If you mail, post, or hand deliver, print your notice on letterhead, if available.

<i>If You Are a...</i>	<i>You Must Notify Consumers by...</i>	<i>...and By One or More of the Following Methods to Reach Persons Not Likely to be Reached by the Previous Method...</i>
Community Water System [64463.4(c)(1)]	Mail or direct delivery <sup>(a)</sup>	Publication in a local newspaper
		Posting in public places served by the water system or on the Internet <sup>(b)</sup>
		Delivery to community organizations
Non-Community Water System [64463.4(c)(2)]	Posting in conspicuous locations throughout the area served by the water system <sup>(b)</sup>	Publication in a local newspaper or newsletter distributed to customers
		Email message to employees or students
		Posting on the Internet or intranet <sup>(b)</sup>
		Direct delivery to each customer

(a) Notice must be distributed to each customer receiving a bill including those that provide their drinking water to others (e.g., schools or school systems, apartment building owners, or large private employers), and other service connections to which water is delivered by the water system.

(b) Notice must be posted in place for as long as the violation or occurrence continues, but in no case less than seven days.

The notice attached is appropriate for the methods described above. However, you may wish to modify it before using it for posting. If you do, you must still include all the required elements and leave the health effects and notification language in italics unchanged. This language is mandatory [64465].

### Multilingual Requirement

Spanish. Each public notice must contain information in Spanish regarding (1) the importance of the notice or (2) contain a telephone number or address where Spanish-

speaking residents may contact the water system to obtain a translated copy of the public notice or assistance in Spanish.

*Non-English Speaking Groups Other than Spanish-Speaking.* For each group that exceeds 1,000 residents or 10% of the residents in the community served, whichever is less, the public notice must (1) contain information in the appropriate language(s) regarding the importance of the notice or (2) contain a telephone number or address where such residents may contact the water system to obtain a translated copy of the notice or assistance in the appropriate language.

### **Population Served**

Make sure it is clear who is served by your water system -- you may need to list the areas you serve.

### **Corrective Action**

In your notice, describe corrective actions you are taking. Do not use overly technical terminology when describing treatment methods. Listed below are some steps commonly taken by water systems with chemical or radiological violations. Use one or more of the following actions, if appropriate, or develop your own:

- "We are working with [local/state agency] to evaluate the water supply and researching options to correct the problem. These options may include treating the water to remove arsenic or connecting to [system]'s water supply."
- "We have stopped using the contaminated well. We have increased pumping from other wells, and we are investigating drilling a new well."
- "We will increase the frequency at which we test the water for arsenic."
- "We have since taken samples at this location and had them tested. They show that we meet the standards."

### **After Issuing the Notice**

Send a copy of each type of notice and a certification that you have met all the public notice requirements to the Department within ten days after you issue the notice [64469(d)]. You should also issue a follow-up notice in addition to meeting any repeat notice requirements the Department sets.

It is recommended that you notify health professionals in the area of the violation. People may call their doctors with questions about how the violation may affect their health, and the doctors should have the information they need to respond appropriately.

It is a good idea to issue a "problem corrected" notice when the violation is resolved.

## **IMPORTANT INFORMATION ABOUT YOUR DRINKING WATER**

Este informe contiene información muy importante sobre su agua potable.  
Tradúzcalo o hable con alguien que lo entienda bien.

### **Foster Farms Feed Mill Has Levels of Arsenic Above the Drinking Water Standard**

Our water system recently violated a drinking water standard. Although this is not an emergency, as our customers, you have a right to know what you should do, what happened, and what we are doing to correct this situation.

We routinely monitor for the presence of drinking water contaminants. Water sample results received on [date] showed arsenic levels of [level and units]. This is above the U.S. EPA standard, or maximum contaminant level (MCL) of 0.010 milligrams per liter.

#### **What should I do?**

- **You do not need to use an alternative water supply (e.g., bottled water).**
- This is not an emergency. If it had been, you would have been notified immediately. However, *some people who drink water containing arsenic in excess of the MCL over many years may experience skin damage or circulatory system problems, and may have an increased risk to getting cancer.*
- If you have other health issues concerning the consumption of this water, you may wish to consult your doctor.

#### **What happened? What is being done?**

[Describe corrective action]. We anticipate resolving the problem within [estimated time frame].

For more information, please contact [name of contact] at [phone number] or [mailing address].

*Please share this information with all the other people who drink this water, especially those who may not have received this notice directly (for example, people in apartments, nursing homes, schools, and businesses). You can do this by posting this public notice in a public place or distributing copies by hand or mail.*

#### **Secondary Notification Requirements**

Upon receipt of notification from a person operating a public water system, the following notification must be given within 10 days [Health and Safety Code Section 116450(g)]:

## Attachment B

- SCHOOLS: Must notify school employees, students, and parents (if the students are minors).
- RESIDENTIAL RENTAL PROPERTY OWNERS OR MANAGERS (including nursing homes and care facilities): Must notify tenants.
- BUSINESS PROPERTY OWNERS, MANAGERS, OR OPERATORS: Must notify employees of businesses located on the property.

This notice is being sent to you by [system].

State Water System ID#: \_\_\_\_\_. Date distributed: \_\_\_\_\_.